IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

WP(C).No. 6934 of 2007(A)

AGAINST THE ORDER IN EP 17 2006 IN OS.794/1999 of II ADDL.SUB COURT,THRISSUR

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PETITIONER:

RAVEENDRANATHAN, AGED 50,
S/O.GOVINDAN, AMANATH HOUSE, KRISHNA GARDENS,
THRISSUR TOWN, THRISSUR DISTRICT.

BY ADV. SRI.G.SREEKUMAR (CHELUR)
SRI.K.RAVI (PARIYARATH)
SRI.GINESH.P.

RESPONDENTS:

NANGINI JOHN, S/O.ENASU,
PARALAM VILLAGE, THRISSUR TALUK.

BY ADV. SRI.MILLU DANDAPANI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 6934/2007 A

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE EXECUTION PETITION NO. 17/06 IN OS NO. 794/99 DT. 2/1/2006 ON THE FILE OF THE SUB COURT, THRISSUR.

EXT.P2. COPY OF THE OBJECTION FILED BY THE PETITIONER HEREIN DT. 21/7/2006.

EXT.P3. COPY OF THE ORDER BY THE SUB COURT, THRISSUR DT. 17/11/06 IN EP NO. 17/06 IN OS NO. 794/99.

True copy

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M.N.KRISHNAN, J

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W.P.(C) No.6934 OF 2007

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Dated this the 30th day of May, 2007

JUDGMENT

This writ petition is filed to quash the order in E.P.No.17 of 2006 directing to arrest the writ petitioner. The execution was laid for realisation of the amount due under the decree. Defendant entered appearance and raised a contention that he has no means to pay the amount. When the evidence was adduced and PW1 was examined, the counsel for the writ petitioner was absent. So he was not cross examined. Further, no evidence was adduced on the side of the writ petitioner. It is submitted by the counsel for the writ petitioner that he could not be cross examined since the advocate for the respondent sought a passing over of the case because on his way to the court he had a sudden fall from the motor cycle. The said fact is averred in the writ petition as well.

2. Taking into consideration of the fact that on account of the ailment of the counsel that the matter could not be prosecuted I feel in the interest of justice, an opportunity be given to the writ petitioner to contest the case properly by cross examining the decree holder and by examining himself.

Therefore the order under challenge is set aside and the matter is remitted back to the executing court for fresh consideration. The executing court is directed to give an opportunity to cross examine PW1 and permit the writ petitioner to adduce evidence in support of his contention. If any additional evidence is sought to be adduced by the decree holder, that also may be permitted, i.e. both oral and documentary.

Parties are directed to appear before the executing court on 4.7.2007.

Writ petition is disposed of accordingly.

M.N.KRISHNAN, JUDGE

Cdp/-